



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 31, 2011

Mr. F.C. Schneider
Public Information Officer
Associate General Counsel
Texas Department of Savings and Mortgage Lending
2601 North Lamar, Suite 201
Austin, Texas 78705

OR2011-04453

Dear Mr. Schneider:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 413163.

The Texas Savings and Mortgage Lending Department (the "department") received a request for six categories of information pertaining to a specified complaint against a named licensee. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(a), (b). You state the department received the request for information on January 6, 2011. You also state the department was closed for business on January 17, 2011, and January 19, 2011. Thus, the department's ten-business-day-deadline was January 24, 2011. However, we received the department's request for a ruling on January 25, 2011, and the department has provided no evidence its request for a ruling was deposited into interagency mail within the ten business-day deadline. *See id.* § 552.308(b) (state agency can meet the ten-business-day requirement if the request, notice, or other writing is sent by interagency mail and the agency provides evidence sufficient to establish that the request was deposited in interagency mail within that period). Consequently, we find the department failed to comply with section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption

that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because section 552.101 of the Government Code can provide a compelling reason to overcome this presumption, we will consider the department's claims under this exception.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 156.301 of the Finance Code. Chapter 156 of the Finance Code is also known as the Mortgage Broker License Act. *See* Fin. Code § 156.001. Section 156.301 provides in part:

(a) The [savings and loan] commissioner may conduct inspections of a person licensed under this chapter as the commissioner determines necessary to determine whether the person is complying with this chapter and applicable rules. The inspections may include inspection of the books, records, documents, operations, and facilities of the person and access to any documents required under rules adopted under this chapter. The commissioner may share evidence of criminal activity gathered during an inspection or investigation with any state or federal law enforcement agency.

(b) On the signed written complaint of a person, the commissioner shall investigate the actions and records of a person licensed under this chapter if the complaint, or the complaint and documentary or other evidence presented in connection with the complaint, provides reasonable cause. The commissioner, before commencing an investigation, shall notify a mortgage broker or loan officer in writing of the complaint and that the commissioner intends to investigate the matter.

(c) For reasonable cause, the commissioner at any time may investigate a person licensed under this chapter to determine whether the person is complying with this chapter and applicable rules.

...

(f) Information obtained by the commissioner during an inspection or an investigation is confidential unless disclosure of the information is permitted or required by other law.

Id. § 156.301(a)-(c), (f). You claim the request encompasses information obtained in an investigation conducted by the department. You argue the documents accumulated during

the investigation and the final investigation report in Exhibits 3 and 4 are confidential under section 156.301(f). You do not inform this office, and we are not otherwise aware, of any law that would permit or require the department to release any of this information. Therefore, we agree the information obtained by the department during its investigation and portions of the final report which reveal this same information are confidential under section 156.301(f). However, the remaining portions of the final investigation report and a communication sent by the department do not constitute information "obtained by the commissioner during an inspection or an investigation[.]" *Id.* § 156.301(f). Accordingly, this information, which we marked for release, may not be withheld under section 552.101 in conjunction with section 156.301(f). Accordingly, except for the information we marked for release, the department must withhold the submitted information under section 552.101 in conjunction with section 156.301(f).

You ask this office to issue a previous determination permitting the department to withhold information obtained by the department during an inspection or investigation into a licensee under section 552.101 of the Government Code in conjunction with section 156.301(f) of the Finance Code without requesting a ruling from this office. We decline to issue such a previous determination at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 413163

Enc. Submitted documents

c: Requestor
(w/o enclosures)